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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 DOMINGO GERMAN MACAVILCA,

10 Plaintiff,

11 v.

12 WARDEN WIGGEN, *et al.*,

13 Defendants.

No. C08-5637 FDB/KLS

**REPORT AND RECOMMENDATION
NOTED FOR: February 19, 2010**

14 This civil rights action has been referred to the undersigned United States Magistrate
15 Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4.

16 It has been more than sixty days since the Court's latest mailings to Plaintiff were
17 returned and the Court does not have a current address for the Plaintiff. Therefore, the
18 undersigned recommends that the Court dismiss this action as Plaintiff appears to have
19 abandoned his case.

20 **DISCUSSION**

21 On November 25, 2008, the court granted Plaintiff's application for leave to proceed *in*
22 *forma pauperis* and filed his complaint. Dkts. 5 and 6. On January 1, 2009, following the
23 court's order to show cause, Plaintiff filed an Amended Complaint. Dkts. 7 and 8. On February
24 12, 2009, mail sent by the court to Plaintiff was returned as undeliverable and on February 18,
25 2009, Plaintiff provided the court with notice that his new address was in Kearny, NJ. Dkts. 10
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1 and 11. Thereafter, the U.S. Department of Justice notified the court that Plaintiff had been
2 removed to Peru by the U.S. Department of Homeland Security on February 2, 2009. Dkt. 12.
3 However, Plaintiff continued to litigate his case through the New Jersey mailing address. *See*
4 Dkt. 18. On September 29, 2009, Plaintiff provided the court with notice that his new address
5 was now in Seattle, Washington. Dkt. 23. At the same time, he filed a response to the motion to
6 dismiss of Defendant Clark. Dkt. 24.

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8 On October 26, 2009, the court recommended that Defendant Clark's motion to dismiss
9 be granted. Dkt. 25. The District Court adopted the recommendation and granted Mr. Clark's
10 motion to dismiss. Dkt. 26.

11 The court's October 26, 2009 report and recommendation was mailed to Plaintiff at his
12 Seattle address on October 26, 2009. Dkt. 25. That mail was returned as "not deliverable as
13 addressed/unable to forward." Dkt. 27.

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15 Plaintiff has not notified the Court of his current address.

16 Local Rule 41(b)(2) states:

17 A party proceeding pro se shall keep the court and opposing parties advised as to
18 his current address. If mail directed to a pro-se plaintiff by the clerk is returned
19 by the post office, and if such plaintiff fails to notify the court and opposing
20 parties within sixty days thereafter of his current address, the court may dismiss
21 the action without prejudice for failure to prosecute.

22 This action has existed more than sixty days without an address for the Plaintiff.
23 Dismissal without prejudice for failure to prosecute is appropriate. Accordingly, the undersigned
24 recommends **DISMISSAL WITHOUT PREJUDICE** for failure to prosecute pursuant to Local
25 Rule 41(b)(2).
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1 **CONCLUSION**

2 The Court should dismiss this action without prejudice as Plaintiff has left no forwarding
3 address and appears to have abandoned the case.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
5 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
6 objections. *See also* Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those
7 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the
8 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on
9 **February 19, 2010**, as noted in the caption.
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12 DATED this 2nd day of February, 2010.

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15 Karen L. Strombom
16 United States Magistrate Judge
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